



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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NOV - 4 2015

RE: MUR 6977
House Majority PAC and Shannon
Roche in her official capacity as
treasurer

Dear Mr. Elias:

On June 16, 2014, the Federal Election Commission ("Commission") notified your clients, House Majority PAC and Shannon Roche in her official capacity as treasurer, that it had ascertained information in the normal course of carrying out its supervisory responsibilities indicating that your clients may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). At that time, we also provided your clients with a copy of the referral document received by this Office. The referral concerned the failure to timely file four (4) 24-Hour Reports to support seven (7) independent expenditures totaling \$67,653.88. On August 4, 2014, we received your clients' response to the referral.

On October 27, 2015 the Commission found reason to believe that your clients violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.4(c), provisions of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to you as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that you violated the law.

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If you are interested in engaging in pre-probable cause conciliation, please contact Ana Peña-Wallace, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

We look forward to your response.

On behalf of the Commission,


Ann M. Ravel
Chair

Enclosures
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** House Majority PAC
6 and Shannon Roche in her
7 official capacity as treasurer

MUR 6977

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10 **I. INTRODUCTION**

11 This matter was generated based on information ascertained by the Federal Election
12 Commission ("the Commission") in the normal course of carrying out its supervisory
13 responsibilities. See 52 U.S.C. § 30109(a)(2). The Commission's Reports Analysis
14 Division ("RAD") referred House Majority PAC ("HMPAC") to the Office of General Counsel
15 ("OGC") for its failure to timely file four 24-Hour Reports of independent expenditures for seven
16 independent expenditures totaling \$67,653.88 during the 2012 election cycle. HMPAC
17 acknowledges its failure to timely file these reports, but blames the untimely filings on vendor
18 invoices received after the 24-hour period and argues that it used best efforts in filing these
19 reports. As discussed below, the violations are clear, and were sufficient for referral for
20 enforcement action. Further, HMPAC does not present information that would justify
21 completely excusing its untimely filings under a best efforts defense. Therefore, the
22 Commission has determined to open a matter under review ("MUR") and find reason to believe
23 that House Majority PAC and Shannon Roche in her official capacity as treasurer violated
24 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.4(c) by failing to timely file its independent
25 expenditure reports.

26 **I. FACTUAL AND LEGAL ANALYSIS**

27 **A. Facts**

28 HMPAC is an independent expenditure-only political committee registered with the

Commission since April 8, 2011.¹ RAD's referral concerns four 24-Hour Reports regarding seven expenditures made shortly before the 2012 General Election, totaling \$67,653.88.² Those independent expenditures were as follows:

DATE OF INDEPENDENT EXPENDITURE	PAYEE	AMOUNT	DATE 24-HOUR REPORT DUE	DATE 24-HOUR REPORT FILED
10/23/2012	Waterfront Strategies	\$24,882.35	10/24/2012	12/17/2012
10/25/2012	Waterfront Strategies	\$29,858.82	10/26/2012	12/18/2012
10/29/12	MITC, LLC	\$3,183.50	10/30/2012	12/19/2012
10/29/12	MITC, LLC	\$3,183.50	10/30/2012	12/19/2012
10/29/12	MITC, LLC	\$3,183.50	10/30/2012	12/19/2012
10/29/12	MITC, LLC	\$3,183.50	10/30/2012	12/19/2012
11/2/2012	Waterfront Strategies	\$178.71	11/2/2012	12/21/2012

HMPAC did not file 24-Hour Reports for any of these expenditures within the 24-hour filing period. HMPAC's original 2012 Post-General Report, filed December 6, 2012, also did not disclose these independent expenditures. In mid-December 2012, HMPAC filed four amended 24-Hour Reports disclosing these expenditures, and then included them in its Amended 2012 30-Day Post-General Report filed on January 31, 2013. RAD sent HMPAC a Request for Additional Information ("RFAI") on July 5, 2013, concerning the independent expenditures disclosed on its Amended 2012 30-Day Post-General Report.³ In response, HMPAC filed a

¹ HMPAC has been a named Respondent in other enforcement matters since registering with the Commission. See MUR 6617 (HMPAC/Vilsack for Iowa), MUR 6667 (HMPAC/Cheri Bustos for Congress).

² RR 14L-21 Attach. 3.

³ RR 14L-21 at 2.

1 Form 99 (Miscellaneous Electronic Submission) stating that “[t]he Committee received the
2 independent expenditure invoices from the vendors after the 24 hour period.”⁴

3 RAD referred HMPAC to OGC for its failure to timely file the required 24-hour
4 independent expenditure reports. In its response to the referral, HMPAC explains that it
5 discovered the unreported expenditures while “preparing its reports filed after Election Day and
6 auditing its own compliance on old reports.”⁵ It further explains that two of its expenditures
7 made to Waterfront Strategies, totaling \$54,741, had not been reported “in part because the
8 invoices were received late from the vendor.”⁶ HMPAC does not explain why it did not timely
9 report the remaining \$12,894.71 in independent expenditures to Waterfront Strategies and
10 another vendor.

11 In further response to the referral, HMPAC argues that it used “best efforts” to comply
12 with the Act, as shown by its high overall compliance rate for the 2012 election cycle and the
13 fact that the RAD referral only identified one type of error, not systemic compliance issues.⁷ The
14 committee also notes that the late reported independent expenditures consisted of “less than one
15 quarter of one percent of the Committee’s independent expenditure activity for the election

⁴ *Id.*

⁵ Resp. at 2.

⁶ *Id.*

⁷ *Id.* at 2-3.

cycle,” and that they were “made in the busiest weeks leading up to the election.”⁸ HMPAC asserts that it “took steps to collect all information necessary to file amended reports.”⁹

B. Analysis

The Act requires committee treasurers to file reports of disbursements in accordance with the provisions of 52 U.S.C. § 30104(b).¹⁰ This requirement includes reporting independent expenditures made by political committees other than authorized committees.¹¹ Every political committee that makes independent expenditures must report them in its regularly scheduled disclosure reports in accordance with 11 C.F.R. § 104.3(b)(3)(vii).¹² In addition, political committees that make independent expenditures aggregating \$1,000 or more with respect to a given election after the 20th day, but more than 24 hours before the date of that election, must disclose them within 24 hours following the date of dissemination.¹³ The committee must file additional reports within 24 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$1,000.¹⁴ When the treasurer of a political committee

⁸ *Id.* at 2. During the 2012 election cycle, HMPAC reported 593 independent expenditures totaling \$30,470,335. *Id.* at 1.

⁹ *Id.* at 2.

¹⁰ 52 U.S.C. § 30104(a)(1).

¹¹ 52 U.S.C. § 30104(b)(4)(H)(iii), *see also* 11 C.F.R. § 104.3(b)(1)(vii).

¹² 11 C.F.R. § 104.4(a). Such a political committee must disclose on Schedule E the name of a person who receives any disbursement during the reporting period in an aggregate amount or value in excess of \$200 within the calendar year in connection with an independent expenditure by the reporting committee. The report also must disclose the date, amount, and purpose of any such independent expenditure and include a statement that indicates whether such independent expenditure is in support of or in opposition to a candidate, as well as the name and office sought by such candidate. Independent expenditures of \$200 or less do not need to be itemized, though the committee must report the total of those expenditures on line (b) of Schedule E. *Id.*

¹³ 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 104.4(c).

¹⁴ 11 C.F.R. § 104.4(c).

1 shows that best efforts have been used to obtain, maintain, and submit the information required
2 by the Act for the political committee, any report of such committee shall be considered in
3 compliance with the Act.¹⁵

4 HMPAC failed to timely file four 24-hour independent expenditure reports, in violation
5 of 52 U.S.C § 30104(b) and 11 C.F.R. § 104.4(c). Respondents do not dispute these violations
6 but argue that they should not be penalized because they used best efforts by taking steps to
7 review and obtain the necessary information to disclose the expenditures in amended 24-hour
8 reports. And, as mentioned above, HMPAC claims the errors made up a small percentage of its
9 overall 2012 cycle filings, the errors do not suggest systemic compliance problems, and further
10 enforcement action amounts to “nit-picking” over “*de minimis*” errors.¹⁶

11 HMPAC’s best efforts arguments are unpersuasive.¹⁷ In determining whether a
12 committee has shown best efforts, the Commission considers the affirmative steps taken to keep
13 adequate records and make accurate reports, as well as the reasons for its failure to obtain,
14 maintain, or submit the information properly.¹⁸ HMPAC, however, has not provided information
15 substantiating its claim that it made best efforts to submit these reports timely; it merely points to
16 other similar reports it filed correctly and its voluntary filing of amended reports. To the extent
17 HMPAC is blaming its failure to file timely reports on late billings from its vendors, the Best

¹⁵ 52 U.S.C. § 30102(i), 11 C.F.R. § 104.7(a). *See also*, Statement of Policy Regarding Treasurers’ Best Efforts to Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act, 72 Fed. Reg. 31,438 (June 7, 2007) (“Best Efforts Policy”).

¹⁶ Resp. at 2-4.

¹⁷ Best efforts is an affirmative defense, and HMPAC bears the burden of presenting “evidence sufficient to demonstrate that best efforts were made.” Best Efforts Policy at 31,440.

¹⁸ *Id.*

1 Efforts Policy usually excludes “delays caused by committee vendors or contractors” as a valid
2 basis for this defense.¹⁹ Finally, there is nothing in the Best Efforts Policy supporting HMPAC’s
3 argument that committees that make only one type of filing error are eligible for relief. Thus,
4 HMPAC has not demonstrated best efforts to be considered in compliance with the Act with
5 respect to the violations in the referral. Therefore, there is reason to believe that HMPAC
6 violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.4(c).

¹⁹ *Id.*